

- DRAFT -

AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT, made this 8th day of August, 19 89, by and between the City of Elgin, Oregon, a municipal corporation, hereinafter referred to as the OWNER, and Anderson-Perry & Associates, Incorporated, hereinafter referred to as the ENGINEER:

The OWNER intends to construct Sewage Collection System and Treatment System Improvements as outlined in the 1989 Wastewater Facilities Plan, Alternative 2, prepared by Anderson-Perry & Associates, Inc.

In summary, the project consists of rehabilitation of the OWNER's collection system in order to eliminate, where cost effective, excessive amounts of infiltration/inflow into the system. The work will include cleaning and TV inspection of key sections of the OWNER's collection system, grouting repair of defective pipes, manhole sealing, and replacement or repair of leaking service lines. The existing treatment plant facilities will be rehabilitated including the pumping station, flowmetering equipment, chlorination facilities, and existing lagoon ponds. Additional lagoon capacity will be provided, including modified piping of the existing lagoons and baffling to eliminate short circuiting. Excessive amounts of sludge which currently exist in the lagoon ponds will be removed and disposed of. Land application of effluent from the treatment facility will be utilized during the summer periods. The OWNER will purchase farm land in the vicinity of the wastewater treatment plant and an irrigation system and effluent disposal system will be installed for disposal. These improvements are to be paid in part with financial assistance from the State of Oregon Economic Development Department, hereinafter referred to as the EDD, through the Oregon Community Development Block Grant Program, the U.S. Environmental Protection Agency, hereinafter referred to as the EPA, pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq.), and the Oregon State Department of Environmental Quality, hereinafter referred to as the DEQ. Farmers Home Administration (FmHA) will provide loan funds for the local share.

The ENGINEER agrees to perform the various professional engineering services required for the design and construction of said improvements in accordance with applicable Oregon State Economic Development Department, Oregon State Department of Environmental Quality, Farmers Home Administration, and U.S. Environmental Protection Agency. This Agreement is subject to and shall be performed in accordance with EPA required provisions contained in the attached Appendix C-1 of 40 CFT, Part 35, Subpart E, in effect on the date of execution of the Agreement. This Agreement will be reviewed by the DEQ, EDD, and FmHA.

CONCEPTUAL DESIGN AND PRELIMINARY ENGINEERING

1. The ENGINEER shall assist with the preparation of an Environmental Review Record and with the preparation of required notices, along with all other necessary paperwork for the Community Development Block Grant, the EPA Grant, and FmHA Loan, etc. The ENGINEER shall meet with the OWNER and representatives of local, State and Federal agencies from time to time as necessary.
2. The ENGINEER shall prepare conceptual designs and preliminary I/I evaluations and review the designs with the OWNER and applicable agencies. The ENGINEER shall also update preliminary cost estimates based upon conceptual design, if necessary. This work shall include all minor surveys necessary for locating the proposed improvements on the ground, but shall not include property surveys, property plats, legal descriptions, and other items necessary for negotiating for land rights or easements, or detailed topographic mapping of the storage lagoon or irrigation site.
3. After the OWNER has approved the conceptual designs prepared by the ENGINEER, the ENGINEER shall proceed with the final project design.

DESIGN ENGINEERING

1. The ENGINEER shall complete the necessary mapping, accomplish the detailed designs of the projects, prepare detailed drawings, specifications and contract documents, and make approximate estimates of the anticipated final costs based on these final designs.
2. The drawings prepared by the ENGINEER shall be in sufficient detail to permit the actual location of the improvements on the ground. The ENGINEER shall prepare and furnish to the OWNER without any additional compensation, three copies of a map showing the needed construction easements and permanent easements and the land to be acquired. Property surveys, property plats, legal descriptions, and negotiations for land rights shall be accomplished by the OWNER unless the OWNER requests the ENGINEER to perform these services. In the event the ENGINEER is requested to perform such services and make detailed surveys, the ENGINEER shall be additionally compensated as provided for under "Other Engineering Services."
3. The ENGINEER shall attend public meetings and conferences with the OWNER and representatives of State and Federal agencies and other interested parties.

4. The Contract Documents furnished by the ENGINEER shall utilize EPA, FmHA, and EDD endorsed standard construction documents, including the required Supplemental Conditions, Contract Change Orders, and Partial Payment Estimates. All of these documents shall be subject to DEQ, FmHA, and EDD approval. Prior to the advertisement for bids, the ENGINEER will provide detailed drawings, specifications, Contract Documents for the review, approval, and use of the OWNER and the appropriate Federal, State, and local agencies from which approval of the project must be obtained.
5. The ENGINEER will furnish additional copies of the drawings, specifications, and contract documents as required by prospective bidders, material suppliers, and other interested parties. The ENGINEER may charge for such copies to offset the cost of printing and handling expenses.
6. Upon award of the contract, the ENGINEER will furnish to the CITY three sets of contract documents for execution. The cost of these sets shall be included in the basic compensation paid to the ENGINEER.

CONSTRUCTION ENGINEERING

1. The ENGINEER will attend the bid openings, tabulate the bid proposals, make an analysis of the bids, check bid forms and bonds and make recommendations for awarding contracts for construction. The ENGINEER will assist the OWNER in negotiating and awarding such contracts.
2. After the award of construction contracts by the OWNER, the ENGINEER shall meet with the contractors and the OWNER in a preconstruction conference to discuss project schedules, procedures, etc.
3. The ENGINEER will keep the OWNER, FmHA, EDD, and DEQ informed concerning progress of the work and will attend meetings held by the OWNER, regulating agencies and the contractor as they relate to the project.
4. The ENGINEER will review any necessary shop and working drawings furnished by contractors.
5. The ENGINEER will provide general engineering review of the work of the contractor as construction progresses. The ENGINEER shall also provide full-time or part-time personnel on site as appropriate to review the work. The ENGINEER shall keep the OWNER informed as to any known deviations from the Contract Documents or agreements made at the preconstruction conference. Copies of regular progress reports will be sent to the OWNER, FmHA, other agencies, and the Contractor. The ENGINEER will interpret the intent of the Drawings and

Specifications. The ENGINEER's undertaking hereunder shall not relieve the contractor of his obligation to perform the work in conformity with the Drawings and Specifications and in a workmanlike manner; shall not make the ENGINEER an insurer of the contractor's performance; and shall not impose upon the ENGINEER any obligation to see that the work is performed in a safe manner.

6. The ENGINEER will provide construction staking as may be required to provide control to be used by the contractor as called for in the contract documents.
7. The ENGINEER will provide random testing services as the work progresses to monitor the contractor's compliance with the contract documents. Such tests may include soils gradation and compaction tests, concrete and mortar tests, etc.
8. The ENGINEER will review the Contractor's requests for progress payments, and based upon on-site observation, advise the OWNER as to the ENGINEER's opinion of the extent of the work completed in accordance with the terms of the Construction Contract as of the date of the Contractor's payment request. The review of the Progress Payment Request by the ENGINEER shall not represent that he has made any investigation to determine the uses made by the Contractor of sums paid to the Contractor.
9. The ENGINEER shall prepare Change Orders for the OWNER's, FmHA, and other required agency approval that are necessary for the proper completion of the work by the Contractor.
10. The ENGINEER will provide the OWNER with one set of mylar reproducible "record drawings", and two sets of prints. Such drawings will be based upon information provided by the OWNER, engineering representative and the contractor. It is recognized that these drawings may contain some discrepancies and omissions and will not necessarily represent "exact" field conditions.
11. The ENGINEER will make a final inspection for the OWNER of all construction and provide a written statement of his final inspection to the OWNER, FmHA, and applicable State and Federal agencies.
12. The ENGINEER shall provide instruction to the OWNER as to the proper operation and maintenance of the new Sewerage Treatment and disposal System. The ENGINEER shall devote up to two working days (not necessarily consecutive) to this task after the entire system is put into operation. This service shall include working with and instructing the Sewage Treatment System operator in the proper methods of operation and maintenance of all equipment, systems, and processes.

13. The ENGINEER shall prepare an Operation and Maintenance Manual for the project in accordance with the requirements of the U.S. Environmental Protection Agency and FmHA. Ten copies of the Operation and Maintenance Manual shall be presented to the OWNER in a separate bound document at the completion of the project. The ENGINEER may require contractors to supply, as a construction specification provision, supplemental information to be used in conjunction with the manual, such as operation and maintenance information on specific equipment, manufacturer's catalogues, parts lists, etc.

OTHER ENGINEERING SERVICES

In addition to the foregoing being performed, the following services may be provided when requested by the OWNER.

1. The ENGINEER shall assist the OWNER with obtaining permits, applications, etc., as necessary for the work. The OWNER shall pay all fees associated with such permits and applications, if such fees are required. The ENGINEER is not responsible for such fees.
2. The ENGINEER shall assist the OWNER with property surveys, property plats, legal descriptions, and other items necessary for negotiating for land rights and easements. The ENGINEER shall assist the OWNER in negotiations for such land and easements when requested to do so by the OWNER. Such work may include appearances before courts and boards on these matters.
3. The ENGINEER shall perform redesign work when requested to do so by the OWNER. Such work shall include changes in the design after the conceptual design state that are beyond the control of the ENGINEER, and changes in the final plans after such plans have been accepted by the OWNER.
4. The ENGINEER shall perform soil tests and borings as required to evaluate subsurface soil conditions.
5. Special laboratory tests, well tests, specialized geological, hydraulic, or other studies, recommended by the ENGINEER.
6. Preparation of water rights applications.
7. The ENGINEER shall provide additional administrative services as needed in administering the project, project grants and other financial assistance programs with outside agencies. Such services may include preparation of payment requests, reports, coordinating meetings, audit data, wage monitoring and reviews, and other support as appropriate to help facilitate the overall project development in accordance with local, State and Federal requirements.

8. The ENGINEER may provide assistance with preparation for and appearances before Courts or Boards on matters of litigation related to the project.
9. After the newly constructed facilities have been tested by the contractor, final inspection of such facilities has been made, and the OWNER accepts the work, the ENGINEER will furnish consultations necessary to correct all unforeseen project difficulties.
10. The ENGINEER may assist the OWNER with the preparation of a Sewer User Ordinance, with a sewer rate schedule, and other ordinances as required by the DEQ and the EPA.
11. The ENGINEER will make a warranty inspection eleven months after the OWNER accepts the project and prior to the expiration of the contractor's one year warranty.

SECTION B - COMPENSATION FOR ENGINEERING SERVICES

1. The OWNER shall compensate the ENGINEER for performing the "Conceptual Design" a lump sum amount of \$17,500. If, during the course of the work, the scope of the work should substantially change, the OWNER and the ENGINEER shall amend this section of the contract as necessary.
2. The OWNER shall compensate the ENGINEER for "Design Engineering" a lump sum amount of \$80,500. If, during the course of the work, the scope of the work should substantially change, the OWNER and the ENGINEER shall amend this section of the contract as necessary.
3. The OWNER shall compensate the ENGINEER for "Construction Engineering", items 1 through 10, on a total personnel cost times a multiplier basis, plus reimbursable expenses, plus a fixed fee for profit of \$10,620.

The OWNER can require either a reduced or increased level of construction review at any time in consultation with the ENGINEER, provided in the event an increased level is required, an agreement shall be reached between the ENGINEER and the OWNER as to whether additional amounts in excess of the maximum charge provided in this section shall be required.

Should the construction periods be increased over those defined above for any cause, or should any Contractor performance be such to require an extraordinary amount of review and coordination, etc., the ENGINEER shall be entitled to additional compensation. Increase in construction time may be due to construction time extensions granted by OWNER, failure of Contractor to complete work within allowable construction time,

poor quality performance of the Contractor, unusual weather, etc. It is agreed that the ENGINEER has no control over the actual time required to complete the work, Contractor's schedule, quality of Contractor's performance, unusual weather conditions, etc.

All of these conditions could increase the amount of Construction Engineering required to properly complete the work. It is agreed that the OWNER and the ENGINEER shall negotiate a reasonable compensation should additional Construction Engineering be required.

4. The OWNER shall compensate the ENGINEER for preparation of an Operation and Maintenance Manual and for in-depth instruction during startup as outlined in "Construction Engineering", items 12 and 13, for a lump sum amount of \$8,500. This amount shall include all costs of travel and subsistence.
5. The OWNER shall compensate the ENGINEER for "Other Engineering Services" requested by the OWNER on a total personnel cost times a multiplier basis, plus reimbursable expenses, plus a fixed fee for profit of \$1,800.

The total cost for "Other Engineering Services" is estimated to be \$15,000. This amount shall not be exceeded without notification to and approval of the OWNER.

6. The total personnel cost referred to in this Agreement shall include all payroll, payroll taxes, fringe benefits, etc., plus overtime (if needed) or equivalent compensation time if it is used in lieu of overtime, all in accordance with ENGINEER'S currently adopted personnel policy. For purposes of billing, the total personnel cost is approximately 0.29 percent of the base wages paid to the employee. This percentage may vary based on the ENGINEER'S future personnel negotiations, etc.
7. The multiplier shall include all overhead costs. The multiplier for this Agreement shall be 2.05, but may be adjusted as necessary to reflect the ENGINEER'S actual overhead rate.
8. Direct reimbursable costs shall include such direct job costs as the cost of travel, subsistence, lodging, special tests and services of special or outside consultants, etc. Mileage shall be charged at \$0.25 per mile. There shall be no charge for telephone calls, postage, and secretarial services.
9. The OWNER agrees to pay the ENGINEER for the services outlined in this section on a monthly basis for the actual services provided. The ENGINEER will render to the OWNER an itemized bill at the end of each month, for compensation for such services performed hereunder during such month, the same to be due and payable by the OWNER to the ENGINEER. The amount of any excise

or gross receipts tax that may be imposed shall be added to the compensation as determined above. Past due amounts owed shall include a service fee charge of 15 % annual interest from the 30th day from date of billing on amounts not subject to dispute. The ENGINEER may suspend work under this Agreement until the account is paid in full. If collection is made by suit or otherwise, the OWNER agrees to pay interest until the account is paid and all collection costs including a reasonable attorney's fee.

SECTION C - GENERAL PROVISIONS

1. Should litigation or arbitration occur between the two parties relating to the provisions of this Agreement, all court costs and attorney's fees incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party.
2. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.
3. In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
4. The ENGINEER intends to render his services under this Agreement in accordance with generally accepted professional practices for the intended use of the project and makes no warranty either express or implied.
5. Any opinion of the construction cost prepared by the ENGINEER represents his judgment as a design professional and is supplied for the general guidance of the OWNER. Since the ENGINEER has no control over the cost of labor and material, or over competitive bidding or market conditions, the ENGINEER does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to the OWNER.
6. The OWNER reserves the right to request replacement of any Project Representatives furnished by the ENGINEER.
7. The OWNER shall pay for advertisement for bids, building or other permits, licenses, etc., as may be required by local, state or federal authorities, and shall secure the necessary land easements, rights-of-way, and construction permits.

8. Insofar as the work under this Agreement may require, the OWNER shall furnish the ENGINEER all existing maps, field survey data, grades and lines of streets, pavements, and boundaries, rights-of-way, and other surveys presently available. The OWNER shall provide for full and free access for the ENGINEER to enter upon all property required for the performance of the ENGINEER's services under this Agreement.
9. This Agreement is to be binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other.
10. Approval of this Agreement by the OWNER and the ENGINEER will serve as written authorization for the ENGINEER to proceed with the services called for in the Agreement.
11. This Agreement represents the entire and integrated agreement between the OWNER and the ENGINEER and supersedes all prior negotiation, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and the ENGINEER. This Agreement shall terminate one year from the date the project is accepted by the OWNER.
12. Original documents, survey notes, tracings and the like, except those furnished to the ENGINEER by the OWNER, are and shall remain the property of the ENGINEER subject to Federal requirements (40 CFR 30.530). Documents, including plans and specifications, which contain an Engineer's stamp prepared under this Agreement are instruments of service of the Engineer. Reuse of any of the plans and specifications that may be developed during the project by the OWNER on extensions of this project or on any other project without the written permission of the ENGINEER shall be at the OWNER's risk. The OWNER agrees to defend, indemnify and hold harmless the ENGINEER from all claims, damages, and expenses including attorneys' fees arising out of such unauthorized reuse of the ENGINEER's instruments of service by the OWNER OR BY OTHER'S AGENTS ACTING THROUGH THE OWNER.
13. Neither the OWNER nor the ENGINEER shall delegate his duties under this Agreement without the written consent of the other.
14. This Agreement may be terminated by either party in the event of default under this contract by the other party. Either party may do so by giving written notice to the other of its intent to terminate this Agreement for substantial failure to perform according to this Agreement, which written notice shall

- specify the failure and demand correction or remedy thereof in 10 days. In the event of failure to remedy or correct in 10 days, this Agreement may be terminated in writing at the option of the party giving the prior notice. If this Agreement is terminated, the ENGINEER shall be paid for services based on actual manhours worked to the termination notice date, including reimbursable expenses due, less any amount in dispute.
15. Unless otherwise specified within this Agreement, this Agreement shall be governed by the law of the State of Oregon.
 16. The ENGINEER shall acquire and maintain statutory workmen's compensation insurance coverage, employer's liability, and comprehensive general liability insurance coverage. The OWNER agrees to limit the ENGINEER's liability to the OWNER and to all construction contractors and subcontractors on the project, if any, due to the ENGINEER's professional negligent acts, errors or omissions, such that the total aggregate liability of the ENGINEER to those named shall not exceed Fifty Thousand (\$50,000.00) Dollars or the ENGINEER's total fee for services rendered on this project, whichever is greater.
 17. The OWNER shall purchase and maintain property insurance upon the work to the full insurable value thereof. The insurance shall insure against the perils of fire and extended coverage, shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, boiler and machinery insurance or additional property insurance, all as may be appropriate for the project. The insurance shall include the interests of the OWNER, ENGINEER, and Contractor or their representatives all of whom shall be listed as insureds or additional insured parties. The OWNER is not required to purchase insurance to protect the interests of the Contractor.
 18. The OWNER will require that any contractor or subcontractor performing work in connection with drawings and specifications produced under this Agreement to hold harmless, indemnify and defend, the OWNER and the ENGINEER, their consultants, and each of their officers, agents, and employees from any and all liability claims, losses or damage arising out of or alleged to arise from the contractor's (or subcontractor's) negligence in the performance of the work described in the construction contract documents, but not including liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants, or their officers, agents and employees.

19. The OWNER and ENGINEER acknowledge that in a project of this magnitude and complexity, changes may be required as the result of possible omissions, ambiguities, or inconsistencies in the plans and specifications or changes that are identified during construction which will result in an overall better end project for the OWNER, or changes which are necessary due to unusual field conditions, or construction circumstances beyond the control of the OWNER, ENGINEER or Contractor.

As a consequence of the above, the OWNER realizes that the Construction Contractors may be entitled to additional payment. The OWNER agrees to set up a reserve in the project budget to be used as required to make additional payments to the Construction Contractors with respect to such changes. When additional payments are due the Contractor they will be made in accordance with an approved Change Order. [The OWNER further agrees to make no claim by way of direct or third party action against the ENGINEER with respect to additional payments made to Construction Contractors or as a result of any claim made by Construction Contractors relating to such changes.]

20. The ENGINEER shall comply with all applicable provisions of the Regulations of the U.S. Department of Commerce (Part 8 of Subtitle 15 of the Code of Federal Regulations) issued pursuant to the Civil Rights Act of 1964, in regard to nondiscrimination in employment because of race, religion, color, sex or national origin. The ENGINEER shall comply with applicable Federal, State, and local laws, rules, and regulations concerning Equal Employment Opportunity.
21. No member, officer, or employee of the OWNER, or its designees or agents, no member of the governing body of the City of Elgin, and no other public official of the City of Elgin who exercises any functions or responsibilities with respect to this contract during his/her tenure or for one year thereafter, shall have any interest direct or indirect, in work to be performed in connection with this contract. All contractors shall incorporate, or cause to be incorporated, in all subcontracts a provision prohibiting such interest.
22. The OWNER, EDD, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to this specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. All required records must be maintained by the ENGINEER for three years after grantee makes final payments and all other pending matters are closed.

23. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 as amended, 12 USC 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower income persons residing in the City of Elgin and contracts for work in connection with the project be awarded to eligible business concerns which are located in or owned in substantial part by persons residing in the City of Elgin.
24. Affirmative steps must be taken to assure that small, minority and women-owned businesses and firms located in labor surplus areas are used when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:
 - a. Include any such qualified firms on solicitation lists.
 - b. Assure that such firms are solicited whenever they are potential sources.
 - c. When economically feasible, divide total requirements into smaller tasks or quantities so as to permit such firms maximum opportunities for participation through subcontracting.
 - d. Where possible, establish delivery schedules which will encourage such participation.
 - e. Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise (Department of Commerce), the Community Services Administration, and other sources when appropriate.

This Agreement executed in triplicate the day and year written at the beginning of this Agreement. This Agreement subject to approval of FmlIA and DEQ.

OWNER:

City of Elgin, Oregon

ENGINEER:

Anderson-Perry & Associates, Inc.

By _____

Type Name Lloyd Spikes

Title Mayor

By _____

Type Name Stephen C. Anderson

Title President

(SEAL)

(SEAL)

ATTEST:

By _____

Type Name Joe Garlitz

Title City Recorder

ATTEST:

By _____

Type Name Howard L. Perry

Title Secretary-Treasurer